IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4414 OF 1999
WITH
CIVIL APPLICATION NO.769 OF 2003
WITH
CIVIL APPLICATION NO.770 OF 2003
WITH
CIVIL APPLICATION NO.895 OF 2003
IN
APPEAL FROM ORDER NO.605 OF 1999

Anil Gulabdas Shah & Ors. ..Applicants.

V/s.

Ashram Tiwari (since deceased through L.R.'s Mrs.Kalavatidevi A. Tiwari & Ors. ..Respondents.

Mr.S.M.Sakhardande i/b. Mr.Shashidharan for applicants.

Mr.N.V.Walawalkar i/b. A.R.Mishra for respondents.

CORAM : A.M.KHANWILKAR, J.

DATED : 7TH AUGUST, 2006.

P.C.:-

C.A.NO.4414 OF 1999

Heard the learned counsel for the parties. Civil Application No.4414 of 1999 has been filed along with the appeal from order presented in the office. The relief claimed in this application is for condonation of 28 days delay in filing the appeal. By the same application, the applicant also prayed for interim relief during the pendency of the appeal.

2. In so far as this application is concerned, the relevant facts are that the impugned order was passed on April 23, 1999. The applicant filed the appeal before this Court along with the said application for condonation of delay on June 21, 1999. Until the filing of the appeal, no application for certified copy of the impugned order was made by the applicants-appellants. The fact remains that the appeal was entertained by the office and in fact this Court proceeded to admit the appeal on June 14, 2000 without passing formal order on the prayer for condonation of delay in filing the appeal.

3. The applicants after institution of the appeal applied for certified copy of the impugned order on June 25, 1999. If the date of application of certified is to be reckoned for the purpose of computing limitation, the delay will be of 32 days in filing the appeal. An explanation has been offered in the application in paragraph 9. The case made out by the applicants is the delay was essentially due to the mistake of the Advocate, which ground if accepted will be sufficient cause to consider the prayer for condonation of delay.

4. The respondents have opposed this application on

the grounds amongst others that the applicants intentionally filed the appeal after the period of limitation had expired and that the explanation offered is not genuine. Taking overall view of the matter, in my opinion, the prayer for condonation of delay in the filing the appeal deserves to be allowed in the interest of justice as the delay is only of 28 days. Ordered accordingly.

C.A.NO.769 OF 2003

5. Applicants have filed another application for condonation of delay being Civil Application No.769 of 2003. On the basis of dates noted in that application, the office has computed delay of 4 years and 59 days in filing of the appeal. That has happened on account of the fact that the certified copy which has been filed by the applicant on record was applied on June 16, 2003. The reason mentioned in the application is that the Advocate’s clerk misplaced the receipt of the first application of certified copy made on June 25, 1999. In this backdrop, the applicants were required to apply afresh for the certified copy of the impugned order on June 16, 2003 and as soon as the certified copies were made available it has been filed in the appeal in this Court on June 20, 2003. In my opinion, the events that

have unfolded were beyond the control of the applicants. It is not possible to accept that the applicants have intentionally caused delay in filing the appeal before this Court. Although the office has computed delay of 4 years and 59 days in filing of the appeal on the basis of the certified copy filed by the applicant, in my opinion, the delay as has occurred deserves to be condoned on condition that the Advocate on record for the applicants-appellants shall compensate the respondents by way of costs quantified at Rs.6,000/-. I am inclined to pass this conditional order as, for the mistake of the Advocate, the litigants should not suffer.

6. The Advocate shall personally pay the costs to the respondents in the sum of Rs.6,000/-. Costs to be paid within one week from today, failing which the office to proceed was the presumption that these Civil Applications No.4414 of 1999 and 769 of 2003 are dismissed for non prosecution, without further reference to this Court.

C.A.NO.770 OF 2003

7. As respondents have entered their appearance in the present proceedings, this application does not

survive.

C.A.NO.895 OF 2003

8. Counsel for the applicants pray that applicants be permitted to withdraw this application with liberty to take appropriate proceedings as may be permissible in law. Accordingly, this application is dismissed as withdrawn with liberty to the applicants as prayed. The proposed proceeding, if filed, to be decided on its own merits in accordance with law.

9. As mentioned earlier in Civil Application No. 4414 of 1999 during the pendency of the appeal, interim relief of status quo was granted on June 21, 1999. That interim relief is continued till the disposal of the appeal.

10. Mr.Walavalkar for the respondents submits that considering the conduct of the applicant, the interim relief should not be continued. It is not possible to accept this submission. The reasons which have been stated across the bar and in the affidavit of the respondents, in my opinion, may be relevant for considering the appeal on merits and cannot be the basis

to vacate the interim order which is operating in favour of the applicants since June 21, 1999.

11. Place the appeal from order for hearing in the week commencing from August 14, 2006 as it pertains to 1999 as per its turn.

(A.M.KHANWILKAR, J.)